

Gary S. Fish, Esq. (GSF 6551)
Attorney for the Plaintiffs
15 Maiden Lane, Suite 1108
New York, New York 10038
(212) 964-5100

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE BAER
07 CIV 6424
X CASE NO.:

MARILYN GUTTIEREZ; and ALEXIS
HERNANDEZ,

PLAINTIFFS' COMPLAINT

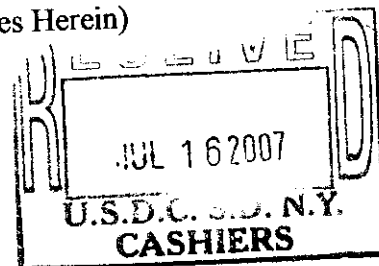
PLAINTIFFS,

(Plaintiff Demands a Trial By Jury
Of All Issues Herein)

-against-

THE CITY OF NEW YORK, "JOHN DOE",
and "RICHARD ROE",

DEFENDANTS.



-----X
The plaintiffs, by and through their attorney Gary S. Fish, Esq., complains of
defendants as follows:

I. PARTIES AND JURISDICTION

1. On or about June 12, 2006, and at all times relevant herein, the plaintiffs resided and reside at 173 23rd Avenue, Patterson, New Jersey 07513.
2. On or about June 12, 2006, and at all times relevant herein, on information and belief, the defendant The City of New York was and is a municipal corporation organized and existing under the law of the State of New York, and on said date, and at all times relevant herein, said defendant had and has a principal place of business located at 530 Municipal Building, New York, New York 10007.
3. On or about June 12, 2006, and at all times relevant herein, on information and belief,

defendant “John Doe” and defendant “Richard Roe” were and are New York City Police Officers employed by defendant The City of New York, and each act of wrongdoing hereinafter alleged to have been committed by said defendants, was committed within the scope of their agency and/or authority and/or employment on behalf of defendant The City of New York.

4. Pursuant to 28 U.S.C. Section 1343(a)(3), the Federal Court herein has original jurisdiction to redress the deprivation of civil rights under color of any State law, statute, ordinance of any right, privilege, or immunity secured by the U.S. Constitution, providing for equal rights of citizens or of all persons within U.S. jurisdiction, and jurisdiction exists herein.

5. Pursuant to 28 U.S.C. Section 1391(b) in a case where jurisdiction is not solely founded on diversity jurisdiction, such as the present case, venue is proper where the defendant resides or a judicial district where a substantial part of the events giving rise to the claim occurred, and venue is proper therefor in the United States District Court, Southern District of New York.

COUNT I
(VIOLATION OF 42 U.S.C. SECTION 1983)

6. On or about June 12, 2006, while the plaintiff Marilyn Gutierrez was lawfully traversing in and around Fifth Avenue, New York, New York with co-plaintiff Alexis Hernandez, and were in the process of asking a New York City police officer to directions to that day’s Puerto Rican Day Parade, which the plaintiffs had never been to, they were grabbed by undercover police officers, thrown against the wall, seized, searched, arrested and imprisoned.

7. The defendants caused the plaintiff Marilyn Gutierrez to be wrongfully confined and imprisoned for approximately thirty six (36) hours without probable cause or justification.

8. On or about July 16, 2007, the criminal case against plaintiff Marilyn Gutierrez, Docket #: 2006NY039409 was dismissed by the Judge, Part A, Criminal Court of the City of New York, 100 Centre Street, New York, New York.

9. The unlawful seizure and unlawful search, and/or the false arrest and/or false imprisonment and/or malicious prosecution of the plaintiff Marilyn Gutierrez, a Hispanic American, was wrongful, intentional, without justification and/or without probable cause, was part of a substantial and continuous pattern of wrongdoing and stereotypical racial profiling and discrimination by the defendants against Hispanic-Americans, and plaintiff Marilyn Gutierrez was thereby denied equal rights, protection, privileges and immunities protected under law pursuant to 42 U.S.C. Section 1983.

10. The violation of plaintiff Marilyn Gutierrez's rights secured under 42 U.S.C. Section 1983, was malicious, oppressive, egregious and opprobrious, was calculated to and did result in the loss of plaintiff's liberty rights, and property rights, and defendants, and each of them, are liable for punitive and exemplary damages as a result thereof.

11. As a direct result of defendants' violations of plaintiff Marilyn Gutierrez's rights, privileges and immunities secured under 42 U.S.C. Section 1983, said plaintiff was caused to sustain loss of earnings and/or loss of earning capacity.

12. As a direct result of defendants' violations of plaintiff Marilyn Gutierrez's rights, privileges and immunities secured under 42 U.S.C. Section 1983, the plaintiff was caused to incur and will incur reasonable attorney fees and costs.

COUNT II
(VIOLATION OF 42 U.S.C. SECTION 1983)

13. Plaintiffs herewith repeat, restate, and reallege Paragraphs 1-12 herein above.

14. On or about June 12, 2006, while the plaintiff Alexis Hernandez was lawfully traversing in and around Fifth Avenue, New York, New York with co-plaintiff Marilyn Gutierrez, and were in the process of asking a New York City police officer for directions to that day's Puerto Rican Day Parade, which the plaintiffs had never been to, they were grabbed by undercover police officers, thrown against the wall, seized, searched, arrested and imprisoned.

15. The defendants caused plaintiff Alexis Hernandez to be wrongfully confined and imprisoned for approximately thirty six (36) hours without probable cause or justification.

16. On about July 16, 2007, the criminal case against plaintiff Alexis Hernandez, Docket #: 2006NY039351 was dismissed by the Judge, Part A, Criminal Court of the City of New York, 100 Centre Street, New York, New York.

17. The unlawful seizure and unlawful search, and/or the false arrest and/or the false imprisonment and/or malicious prosecution of the plaintiff Alexis Hernandez, a Hispanic American, was wrongful, intentional, without justification and/or without probable cause, was part of a substantial and continuous pattern of wrongdoing and stereotypical racial and ethnic profiling and discrimination by the defendants against Hispanic-Americans, and plaintiff Alexis Hernandez was thereby denied equal rights, protection, privileges and immunities protected under law pursuant to 42 U.S.C. Section 1983.

18. The violation of Alexis Hernandez's rights secured under 42 U.S.C. Section 1983, was malicious, oppressive, egregious, and opprobrious, was calculated to and did result in the loss

of plaintiff's liberty and property rights, and defendants, and each of them, are liable for punitive and exemplary damages as a result thereof.

19. As a direct result of defendants' violations of plaintiff Alexis Hernandez's rights, privileges, and immunities secured under 42 U.S.C. Section 1983, said plaintiff was caused to sustain loss of earnings, and/or loss of earning capacity.

20. As a direct result of defendants' violations of plaintiff Alexis Hernandez's rights, privileges, and immunities secured under 42 U.S.C. Section 1983, the plaintiff was caused to incur and will incur reasonable attorney fees and costs.

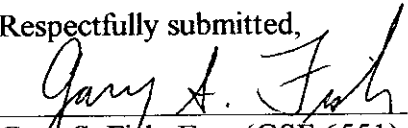
WHEREFORE, plaintiffs prays for relief as follows:

AS AND FOR EACH OF THE FIRST AND SECOND COUNTS:

1. For damages in the amount of \$250,000.00 (Two Hundred Fifty Thousand Dollars and Zero Cents);
2. For punitive and exemplary damages in the amount of \$1,500,000.00 (One Million Five Hundred Thousand Dollars and Zero Cents)
3. For reasonable attorney fees and costs;
4. For disbursements; and
5. For any other just and equitable relief deemed proper by the Court.

DATED: NEW YORK, NEW YORK
JULY 16, 2007

Respectfully submitted,



Gary S. Fish, Esq. (GSF 6551)
Attorney for the Plaintiffs
15 Maiden Lane, Suite 1108
NY, NY 10038; (212) 964-5100

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Marilyn Gutierrez and
Alexis Hernandez
Plaintiff(s),

- against -

The City of New York "John Doe",
and "Richard Roe"
Defendant(s).

CONSENT TO PROCEED BEFORE
UNITED STATES MAGISTRATE JUDGE

_____ Civ. _____ () ()

IT IS HEREBY STIPULATED by the undersigned:

1. All parties consent, pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, that a United States Magistrate Judge conduct all further proceedings in this action, including any trial and entry of final judgment.

2. Any appeal from a judgment entered in this case will lie to the Court of Appeals for the Second Circuit as from any other judgment of the district court pursuant to 28 U.S.C. § 636(c)(3) and Fed. R. Civ. P. 73(c).

Gary S. Fish
Attorney(s) for Plaintiff(s) Gary S. Fish Esq.
Address 15 Maiden Lane #1108, 11
Telephone NY, NY 10038; (212) 964-5100

Attorney(s) for Defendant(s)
Address
Telephone

Attorney(s) for
Address
Telephone

Attorney(s) for
Address
Telephone

(Separately executed forms may be submitted. See Fed. R. Civ. P. 73(b).)

SO ORDERED.

U.S.D.J.

Magistrate Judge _____ was assigned this case on _____.

For: Clerk U.S.D.C. S.D.N.Y.

JS 44C/SDNY
REV. 12/2005

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

| | |
|---|---|
| PLAINTIFFS Marilyn Gutierrez, and Alexis Hernandez | DEFENDANTS The City of New York, "John Doe," and "Richard Roe" |
| ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Gary S. Fish Esq., 15 Maiden Lane #1108 NY NY 10038; (212) 964-1510 | ATTORNEYS (IF KNOWN) unknown |
| CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE) 42 U.S.C. Section 1983 - Unlawful Search, Seizure, Arrest + Imprisonment of Hispanic-Americans | |

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes? ☐ Judge Previously Assigned

If yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

ACTIONS UNDER STATUTES

| | | | | | |
|--|--|---|--|---|---|
| CONTRACT <input type="checkbox"/> 110 INSURANCE <input type="checkbox"/> 120 MARINE <input type="checkbox"/> 130 MILLER ACT <input type="checkbox"/> 140 NEGOTIABLE INSTRUMENT <input type="checkbox"/> 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT <input type="checkbox"/> 151 MEDICARE ACT <input type="checkbox"/> 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS) <input type="checkbox"/> 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS <input type="checkbox"/> 160 STOCKHOLDERS SUITS <input type="checkbox"/> 190 OTHER CONTRACT <input type="checkbox"/> 195 CONTRACT PRODUCT LIABILITY <input type="checkbox"/> 196 FRANCHISE | PERSONAL INJURY <input type="checkbox"/> 310 AIRPLANE <input type="checkbox"/> 315 AIRPLANE PRODUCT LIABILITY <input type="checkbox"/> 320 ASSAULT, LIBEL & SLANDER <input type="checkbox"/> 330 FEDERAL EMPLOYERS' LIABILITY <input type="checkbox"/> 340 MARINE <input type="checkbox"/> 345 MARINE PRODUCT LIABILITY <input type="checkbox"/> 350 MOTOR VEHICLE <input type="checkbox"/> 355 MOTOR VEHICLE PRODUCT LIABILITY <input type="checkbox"/> 360 OTHER PERSONAL INJURY | TORTS PERSONAL INJURY <input type="checkbox"/> 362 PERSONAL INJURY - MED MALPRACTICE <input type="checkbox"/> 365 PERSONAL INJURY PRODUCT LIABILITY <input type="checkbox"/> 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY PERSONAL PROPERTY <input type="checkbox"/> 370 OTHER FRAUD <input type="checkbox"/> 371 TRUTH IN LENDING <input type="checkbox"/> 380 OTHER PERSONAL PROPERTY DAMAGE <input type="checkbox"/> 385 PROPERTY DAMAGE PRODUCT LIABILITY | FORFEITURE/PENALTY <input type="checkbox"/> 610 AGRICULTURE <input type="checkbox"/> 620 FOOD & DRUG <input type="checkbox"/> 625 DRUG RELATED SEIZURE OF PROPERTY <input type="checkbox"/> 630 LIQUOR LAWS <input type="checkbox"/> 640 RR & TRUCK <input type="checkbox"/> 650 AIRLINE REGS <input type="checkbox"/> 660 OCCUPATIONAL SAFETY/HEALTH <input type="checkbox"/> 690 OTHER LABOR <input type="checkbox"/> 710 FAIR LABOR STANDARDS ACT <input type="checkbox"/> 720 LABOR/MGMT RELATIONS <input type="checkbox"/> 730 LABOR/MGMT REPORTING & DISCLOSURE ACT <input type="checkbox"/> 740 RAILWAY LABOR ACT <input type="checkbox"/> 790 OTHER LABOR LITIGATION <input type="checkbox"/> 791 EMPL RET INC SECURITY ACT | BANKRUPTCY <input type="checkbox"/> 422 APPEAL 28 USC 158 <input type="checkbox"/> 423 WITHDRAWAL 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 COPYRIGHTS <input type="checkbox"/> 830 PATENT <input type="checkbox"/> 840 TRADEMARK SOCIAL SECURITY <input type="checkbox"/> 861 MIA (1395FF) <input type="checkbox"/> 862 BLACK LUNG (923) <input type="checkbox"/> 863 DIWC (405(g)) <input type="checkbox"/> 863 DIWW (405(g)) <input type="checkbox"/> 864 SSID TITLE XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 TAXES <input type="checkbox"/> 871 IRS-THIRD PARTY 20 USC 7609 | OTHER STATUTES <input type="checkbox"/> 400 STATE REAPPORTIONMENT <input type="checkbox"/> 410 ANTI-TRUST <input type="checkbox"/> 430 BANKS & BANKING <input type="checkbox"/> 450 COMMERCE/ACC RATES/ETC <input type="checkbox"/> 460 DEPORTATION <input type="checkbox"/> 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO) <input type="checkbox"/> 480 CONSUMER CREDIT <input type="checkbox"/> 490 CABLE/SATELLITE TV <input type="checkbox"/> 810 SELECTIVE SERVICE <input type="checkbox"/> 850 SECURITIES/COMMODITIES/EXCHANGE <input type="checkbox"/> 875 CUSTOMER CHALLENGE 12 USC 3410 <input type="checkbox"/> 891 AGRICULTURE ACTS <input type="checkbox"/> 892 ECONOMIC STABILIZATION ACT <input type="checkbox"/> 893 ENVIRONMENTAL MATTERS <input type="checkbox"/> 894 ENERGY ALLOCATION ACT <input type="checkbox"/> 895 FREEDOM OF INFORMATION ACT <input type="checkbox"/> 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE <input type="checkbox"/> 950 CONSTITUTIONALITY OF STATE STATUTES <input type="checkbox"/> 890 OTHER STATUTORY ACTIONS |
| REAL PROPERTY <input type="checkbox"/> 210 LAND CONDEMNATION <input type="checkbox"/> 220 FORECLOSURE <input type="checkbox"/> 230 RENT LEASE & EJECTMENT <input type="checkbox"/> 240 TORTS TO LAND <input type="checkbox"/> 246 TORT PRODUCT LIABILITY <input type="checkbox"/> 290 ALL OTHER REAL PROPERTY | CIVIL RIGHTS <input type="checkbox"/> 441 VOTING <input type="checkbox"/> 442 EMPLOYMENT <input type="checkbox"/> 443 HOUSING <input type="checkbox"/> 444 ACCOMMODATIONS <input type="checkbox"/> 445 WELFARE <input type="checkbox"/> 445 AMERICANS WITH DISABILITIES - EMPLOYMENT <input type="checkbox"/> 446 AMERICANS WITH DISABILITIES - OTHER <input checked="" type="checkbox"/> 440 OTHER CIVIL RIGHTS | PRISONER PETITIONS <input type="checkbox"/> 510 MOTIONS TO VACATE SENTENCE 28 USC 2255 <input type="checkbox"/> 530 HABEAS CORPUS <input type="checkbox"/> 535 DEATH PENALTY <input type="checkbox"/> 540 MANDAMUS & OTHER <input type="checkbox"/> 550 CIVIL RIGHTS <input type="checkbox"/> 555 PRISON CONDITION | | | |

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

N/A

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding ☐ 2a. Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court
AND at least one party is a pro se litigant

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☐ 4 DIVERSITY

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1332, 1441)

N/A

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

| | | | | | |
|--------------------------|--------------------|---|--------------------|---|--------------------|
| CITIZEN OF THIS STATE | PTF DEF [] [] | CITIZEN OR SUBJECT OF A FOREIGN COUNTRY | PTF DEF [] [] | INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE | PTF DEF [] [] |
| CITIZEN OF ANOTHER STATE | [] [] | INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE | [] [] | FOREIGN NATION | [] [] |

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

173 23rd Avenue, Patterson, New Jersey 07513
County of Patterson, New Jersey

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

All Defendants, 530 Municipal Building
NY, NY 10007

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ FOLEY SQUARE
(DO NOT check either box if this a PRISONER PETITION.)

DATE
7-16-07

SIGNATURE OF ATTORNEY OF RECORD

Gary L. Fish

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO

☒ YES (DATE ADMITTED Mo. 8 Yr. 1989)

Attorney Bar Code # 6551

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)